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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/649,715	08/26/2003	Timothy L. Albright	140/16A	6171
36829	7590	06/23/2005	EXAMINER	
SCHWARTZ LAW FIRM, P.C. 6100 FAIRVIEW ROAD SUITE 530 CHARLOTTE, NC 28210				NASH, BRIAN D
ART UNIT		PAPER NUMBER		
		3721		

DATE MAILED: 06/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/649,715	ALBRIGHT, TIMOTHY L.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Brian Nash	3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 11 April 2005.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1 and 5-11 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1 and 5-11 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 26 August 2003 is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____.   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

## **DETAILED ACTION**

### ***Examiner's Comments***

1. This action is in response to applicant's request for reconsideration 11 April 2005. Applicant cancelled claims 2-4 and added new claims 5-11. The pending claims are now 1 and 5-11.

### ***Specification***

2. The disclosure is objected to because of the following informalities: Applicant has disclosed on the application data sheet that this is a continuation of application 09/934,417. Due to the restriction and subsequent election in the parent case, this a divisional application. The specifications need to state that "This is a divisional of application No. 09/934,417 filed 8/26/2003, now US Patent No. 6,609,999." in order to ensure the applicant's entitlement to the earlier filing date under 35 U.S.C 120 is not overlooked. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 1, 5-6 and 8-10 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by US 5,636,925 to Smiley. Smiley discloses the same invention including a bag made by means of forming an easy-open corner portion of a bag comprising forming a starter nick (slit or cut 80) in a skirt (61,61'), forming a series of closely spaced perforations (70) in the first and second walls

(51,52) of the bag. Smiley further discloses forming the starter nick on the skirt portions extending from the seal line (60) up to the edge and thereby bypassing the seal line of the bag and the starter nick to be in alignment with the perforations so as to be proximate the starter nick to one edge of the bag (see column 5, lines 12-42).

Regarding claims 5-6 and 9-10, Smiley discloses (see Fig. 2) spacing the starter nick from the first of the perforations a distance (C) equal to  $\frac{1}{4}$  inch (.25in) and a distance (D) between the first perforation and second, adjacent perforation equal to  $\frac{5}{32}$  inch (.156in). Therefore, Smiley clearly shows spacing the starter nick from the first of the perforations a distance greater than a distance between the first and second perforations. Furthermore, the distance (C) is clearly at least 50 percent greater than the distance (D), i.e. (.25in) is greater than  $(1.5 \times .156\text{in})$ .

Examiner notes that applicant's remarks pertaining to Smiley, column 6, lines 45-53, reference an alternate method of forming an easy-open corner portion. Examiner's rejection is based upon Smiley's method of forming an easy-open corner portion disclosed in column 5, line 12 to column 6, line 24 wherein Smiley clearly discloses that the perforations (70) and starter nick (80) are formed after the heat sealing strip (60) is formed.

#### *Claim Rejections - 35 USC § 103*

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. Claims 7 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,636,925 to Smiley. As discussed above, Smiley discloses the invention substantially as claimed, but does not show (C), the distance from the starter nick to the first of the perforations to be greater than .38inches. However, Smiley discloses spacing the starter nick from the first of the perforations a distance necessary to avoid severing the sealing strip (60) which in the apparatus and method of Smiley only requires .25inches. It would have been obvious to one skilled in the art to configure/modify this distance in order to avoid severing the bag's sealing strip, since such a modification is within the engineering purview of the skilled artisan concerned with forming an easy-open corner portion via perforations while not severing the bag's sealing strip.

*Conclusion*

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Nash whose telephone number is 571-272-4465. The examiner can normally be reached on Monday – Thursday from 8 a.m. to 5 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached at 571-272-4467.

The official fax number for this Group is: 703-872-9306

Brian Nash  
20 June 2005



SCOTT A. SMITH  
PRIMARY EXAMINER